

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 RICHARD ROY SCOTT,

10 Plaintiff,

11 v.

12 KELLY CUNNINGHAM,

Defendant.

No. C11-6015 BHS/KLS

ORDER REGARDING PLAINTIFF'S
"MOTION FOR SELF RECUSAL"

13
14 On January 25, 2012, Plaintiff filed a "Motion for Self Recusal" and requested that the
15 Honorable Karen L. Strombom, United States Magistrate Judge, recuse herself from these
16 proceedings. Dkt. No. 8. Plaintiff requests that the undersigned recuse herself on the grounds
17 that "[s]he... is acting as the defense lawyer for the defendants again now." Id. Plaintiff is
18 apparently reacting to Magistrate Judge Strombom's order that he amend his complaint or show
19 cause why his matter should not be dismissed. Dkt. No. 6.

20 Pursuant to Local General Rule 8(c), Judge Strombom reviewed Plaintiff's motion,
21 declined to recuse herself voluntarily, and referred the matter to the undersigned. Dkt. No. 9.
22 Plaintiff's motion is therefore ripe for review by this Court.

23
24 Having reviewed the record in the above-entitled matter, the Court finds no grounds
25 requiring Judge Strombom to recuse herself and DENIES the motion.
26

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6

Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate if “a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir.1993). This is an objective inquiry concerned with whether there is the appearance of bias, not whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United States*, 510 U.S. 540 (1994), the United States Supreme Court further explained the narrow basis for recusal:

Id. at 555.

ORDER REGARDING RECUSAL MOTION - 2

amended pleading or risk dismissal. Plaintiff responded with a request for Judge Strombom to recuse herself, concluding his response by observing that

This complaint needs to be served now (not yet) and if the defendants feel the[y] can file a motion to dismiss fine. That is not up to the Magistrate Judge.

Dkt. No. 8, p. 4.

A judge's conduct in the context of pending judicial proceedings does not constitute the requisite bias under 28 U.S.C. § 144 or § 455 if it is prompted solely by information that the judge received in the context of the performance of his duties. Bias is almost never established simply because the judge issued an adverse ruling.

In order to overcome this presumption, Plaintiffs would have to show that facts outside the record influenced decisions or that the presiding judicial officer's rulings were so irrational that they must be the result of prejudice. Plaintiffs do not allege any facts outside the record that improperly influenced the decisions in this matter. Plaintiffs have identified no error of law or fact, much less a determination that was so outlandish as to give rise to an inference of bias.

Plaintiff may disagree with Judge Strombom's rulings but that is a basis for appeal, not disqualification. As Plaintiff has cited no extrajudicial source of bias, the Court finds that Judge Strombom's impartiality cannot reasonably be questioned. There being no evidence of bias or prejudice, Plaintiff's request for recusal is DENIED.

CONCLUSION

There is no reasonable basis for a voluntary recusal in this instance.

Accordingly it is hereby **ORDERED** that the undersigned **DENIES** Plaintiff's motion for Judge Strombom to recuse herself voluntarily.

The Clerk of the Court shall send a copy of this Order to Plaintiff and to any parties who have appeared in this action.

DATED this 24th day of February, 2012.

Wassily Kandinsky

Marsha J. Pechman
Chief United States District Judge